

DIRECTOR'S ORDER #53: SPECIAL PARK USES

Approved: /s/ Fran P. Mainella (signed original on file)
Director

Effective Date: April 4, 2000

Sunset Date: December 31, 2006 (or when superseded)

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PURPOSE AND SCOPE

This is an interim renewal of Director's Order (DO) 53. This order sets forth the policies and procedures for administering special park uses on National Park System lands. It is identical to the edition that was approved April 4, 2000, with a sunset date of April 4, 2004. However, an updated version of this order will be circulated for review and comment following adoption of NPS Management Policies 2006.

1. INTRODUCTION

A special park use is a short-term activity that takes place in a park area and:

- Provides a benefit to an individual, group or organization, rather than the public at large;
- Requires written authorization and some degree of management control from the NPS in order to protect park resources and the public interest;
- Is not prohibited by law or regulation; and

- Is neither initiated, sponsored, nor conducted by the NPS.

The approval or denial of requests to engage in special park uses is an important and continuing responsibility of superintendents. *Superintendents should be aware that local decisions related to permitting special park uses may have Service-wide implications, and set precedents that create difficulties for other superintendents. In such instances, the superintendent should consult with the regional or Service-wide specialist.*

A special park use may involve either rights or privileges, and may or may not support the purposes for which a park was established. In either case, whether the request is approved or denied, the superintendent's decision must be able to withstand review, challenge and litigation. Whether the request is approved or denied, the superintendent's decision must be consistent with service-wide policies and consistent with decisions made on both a park and on a service-wide basis. The judicial standard of review is whether the decision is "arbitrary and capricious."

A special park use does not include any activity managed under the Concessions Management Improvement Act of 1998 (16 USC 590I), any recreation use covered by section 4 of the Land and Water Conservation Fund Act (16 USC 460I-6a), any recreation use covered by the Recreational Fee Demonstration Program (16 USC 460I-6a Note), any leasing activity pursuant to the National Historic Preservation Act (16 USC 470h-3), or Section 802 of the National Parks Omnibus Management Act of 1998 (16 USC 1a-2(k)).

2. AUTHORITIES

2.1 The authority to issue this Director's Order is contained in 16 USC 1 through 4, and in delegations of authority contained in Part 245 of the Department of the Interior Manual.

2.2 The 1916 NPS Organic Act and a 1978 amendment to the NPS General Authorities Act place limits on the kinds of activities that may be allowed within the National Park System. The most important provisions read as follows:

[The National Park Service] shall promote and regulate the use of the [national parks] by such means and measures as conform to the fundamental purpose of the said parks..., which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations (16 USC 1).

The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas

have been established, except as may have been or shall be directly and specifically provided by Congress (16 USC 1a-1).

These provisions of law place obligations on the National Park Service to manage use of park areas in a manner that will protect against the impairment or derogation of park resources, values and purposes.

2.3 Superintendents must be able to cite a specific right or statutory authority to allow a special park use. Rights may include those granted under the Constitution, or through treaty or property entitlements. Statutory authorities include general statutes (*e.g.*, *16 USC 1*), or a park-specific statute. In addition to rights or statutory authorities, managers must also consider Executive orders, regulations, and case law to determine whether a proposed activity or special park use is allowed. Examples of authorities most frequently cited for special park uses are:

- *16 USC 1 - 4*, for general uses
- *16 USC 5* and *79*, for rights of way

Examples of authorities for charging fees and recovering costs related to special uses are:

- *16 USC 3a*, for cost recovery
- *31 USC 9701*, for fee collection

(See also section 10.1.)

3. POLICY GUIDANCE

Primary policy guidance on special park uses is contained in section 8.6 of NPS *Management Policies*. That guidance is summarized in, and supplemented by, this Director's Order.

3.1 General. The National Park Service may permit a special park use if the proposed activity will not:

- Cause injury or damage to park resources; or
- Be contrary to the purposes for which the park was established; or
- Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic or commemorative locations within the park; or
- Unreasonably interfere with the interpretive, visitor service, or other program activities, or with the administrative activities of the NPS; or
- Substantially impair the operation of public facilities or services of NPS concessioners or contractors; or
- Present a clear and present danger to public health and safety; or
- Result in significant conflict with other existing uses.

A superintendent must deny initial or renewal requests upon finding that any of the above conditions will not be met. Existing activities that do not meet these conditions must be phased out.

3.2 Mandatory or Discretionary. Some special park uses are specifically authorized in a park area's enabling legislation, which may indicate that permitting is mandatory ("The Secretary shall permit ..."), or discretionary, ("The Secretary may permit ..."). In either instance, the proposed use is considered to be both authorized and appropriate, as long as adequate safeguards are established to protect park resources, values, and visitors.

3.3 Right or Privilege. A superintendent must determine whether a request for a special park use is prohibited or mandated, or involves a right or a privilege. A right is based on property ownership, legislative or treaty entitlement, or Constitutional guarantee. Where none of these factors is present, the use is a privilege over which the superintendent may exercise varying degrees of discretion and control. Generally speaking, citizens must be afforded the opportunity to exercise their rights; however, a superintendent may establish permit conditions to protect park visitors, park resources and values. When considering a privilege, the superintendent has the additional task of determining whether the activity will be allowed.

3.4 Compliance. The decision to issue or deny a permit for a special park use flows from the appropriate compliance under the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act of 1966 (NHPA), and other applicable laws. For example in the case of NEPA, if the proposed special use is not covered by a categorical exclusion, the superintendent, in preparing an EA or EIS, is responsible for identifying reasonable alternatives, both inside and outside the park, and completing appropriate compliance documentation. Although the superintendent may require the applicant to prepare this documentation, the NPS remains responsible for its content. Regardless of who prepares compliance documents, the applicant is responsible for paying all NPS costs incurred in meeting NEPA and 106 compliance requirements.

3.5 Permit Terms and Conditions. Superintendents will establish permit conditions that protect NPS and public interests, including park resources and values. Special park uses may be authorized for a period of not-to-exceed 5 years. Rights-of-way are addressed separately and may be issued for longer than 5 years. (*See Section 10.*)

3.6 Permit Fees and NPS Cost Recovery. Except as identified in Section 3.7 below, the NPS will charge fees and recover costs for special use permits unless prohibited by law or Executive order, or when the proposed use is protected by the First Amendment or involves another right and not a privilege. Charges should reflect the fair market value of the use requested. The fair market value of a special park use is the value of the lands or facilities used, plus the NPS costs incurred in managing or supporting the use. The NPS will retain funds recovered for the cost of managing a special park use. Charges arising from the use of NPS lands and facilities must be deposited in the U. S. Treasury, unless otherwise specifically authorized by law.

When special use permit fees are proposed to be increased, the superintendent will notify the permittee and/or the public of the increase at least sixty (60) days prior to the fee changes taking effect. (*See 3.12 below. See also Reference Manual 53 Chapter 10.*)

3.7 Permit Fee Waivers. A waiver from the requirements to charge permit fees and to recover costs may be appropriate when:

- Charging and collecting are not cost-effective;
- A waiver is considered an appropriate courtesy to a foreign government or international organization;
- The permittee is a state, local, or Federal agency or Native American tribe or group; or
- The superintendent determines that the proposed use will promote the mission of the NPS or promote public safety, health, or welfare.

3.8 Recreation Fees and Non-Recreation Uses. Special park use permittees who enter a park for recreational purposes are subject to the same entrance fees, recreation use fees, and recreation permit fees as the general public. However, persons engaging in special park uses that are not recreational in nature are exempt from entrance fees. Examples include but are not limited to: First Amendment; agricultural; grazing; filming activities; NPS authorized research; Federal, state and local government business; and outings conducted by schools and other bonafide educational institutions for educational purposes.

3.9 Fees Charged by Permittee. A permittee, while on park property, may not collect admission or any other money associated with a special event. All permittee monetary transactions must take place outside the park.

3.10 Donations. The NPS has authority to accept donations, but not to solicit donations. Therefore, NPS managers will not initiate discussion of a possible donation with any permit applicant. In addition, the applicant must not be approached by a representative of a cooperating association, friends group, or other park partner for a donation while the application is being considered, the permit is being negotiated, or the permitted activities are ongoing.

An applicant's offer of a donation to the park must not in any way influence the superintendent's decision to issue or deny a permit, nor may it influence the manner in which a permit is administered. If a permit applicant voluntarily indicates an interest in making a donation to the park, the superintendent must refrain from discussing the donation until after the permitted activity is completed. Superintendents may not accept donations in lieu of recovering costs.

3.11 Administrative Record. Superintendents must develop an appropriate administrative record to support their decisions. The information must be in writing and, depending on the sensitivity of the matter, contain the dates, discussions, and rationale involved in the decision process and the determination of all fees. In addition, the

administrative record must contain all letters, compliance documentation, notes, and other documents related to the issuance of the permit, including a copy of the executed permit. Permits issued without fees or cost recovery will be retained in the park files for 1 year and 1 day following expiration of the permit. Permits issued with fees or cost recovery will be retained in park files for 6 years and 3 months following expiration of the permit.

3.12 Renewals. Superintendents must carefully review each permitting instrument for a special park use prior to renewal. A request for renewal should be considered as carefully as if it were an initial application. The review should take place before the existing permit expires, and must ascertain the continuing validity of the original findings as well as the Administrative Record of what has taken place since those findings. The review will determine whether the activity is still mandated or legally permissible, and whether it continues to be appropriate and compatible with the purposes of the park. The Renewal Flow Chart found in Reference Manual 53 Chapter 8 should be used for this purpose.

4. PERMITTING INSTRUMENTS

4.1 There are two instruments that may be used to authorize a special park use: (1) a Special Use Permit, or (2) a Right-of-way Permit.

(1) Special Use Permit. Instrument issued by a superintendent to an individual or organization to allow the use of NPS-administered resources and to authorize activities in *36 CFR Parts 1 - 7* that require a permit. (*See Reference Manual 53.*)

(2) Right-of-way permit. Instrument issued by a regional director to authorize any new utilities, including water conduits, on NPS lands. This includes those utilities not owned by the NPS, but serving the NPS and/or NPS concession facilities.

- Superintendents may, as appropriate, renew, amend, or convert other documents to right-of-way permits for existing utilities. Right-of-way renewals and conversions may be signed by the superintendent.
- NPS-owned utilities do not require a right-of-way permit, nor is one required when the specific use is authorized by a property right, such as a deeded easement, or by park-specific or other legislation when the statutory language is so written as to have the same effect as a deeded easement.
- A right-of-way permit does not grant any interest in the land, and is a revocable permit issued at the discretion of the NPS.
- When the right-of-way permit format prescribed by Reference Manual 53 is used without substantive changes, it does not require further review by the Solicitor.

4.2 Other Permits. NPS issues other permits and signed agreements, including but not limited to research, collection, and use of natural and cultural resources. Requirements for these permissions are found in other Director's Orders and related Reference Manuals (such as DO #24 NPS Museum Collections Management, DO #28 Cultural Resource Management, and DO #77 Natural Resources).

5. PERMITTING AND RENEWAL CONSIDERATIONS

5.1 Reasons for Issuing a Permit. There are three primary reasons for issuing a permit, regardless of type:

- To impose conditions to manage the activity and prevent impairment or derogation of resources, values, and purposes for which the park was established;
- To obtain the signature of the permittee agreeing to the conditions and other statements contained within the document; and
- To establish a written account of the special use for inclusion in the administrative record.

5.2 Basic Requirements. To receive consideration, a proposal to engage in a special park use must be submitted in writing; be consistent with applicable legislation, Federal regulations and administrative policies; avoid visitor use conflicts; and should not create unacceptable impacts to park resources. (*See 3.1.*)

5.3 Administrative Record. Special park uses do not have to be allowed simply because a request has been made and discretionary authority for such use exists. The need to develop a rationale for the approval of each special park use request is as important as it is for the denial of such requests. The decision to approve or deny a special park use should be based on objective data and recorded in the administrative record.

5.4 Flow Chart. Superintendents must follow the "Flow Chart For Special Park Use Initial Requests" (see Reference Manual 53 Chapter 8) to ensure that all requirements of law, regulation, and NPS policy are addressed. Any special park use that is approved must be documented in writing, have a specific date for expiration, contain safeguards for the protection of the park's resources and values, and have an adequate administrative record.

5.5 Termination. Occasionally, activities or uses that passed an initial evaluation are no longer permissible. If a previously-permitted activity is found to be without legal authorization, or is judged to be no longer appropriate and compatible with current policy or the purposes of the park and additional stipulations would not mitigate enough to make it appropriate, it must be terminated.

6. PERMIT PROVISIONS

Superintendents will ensure that measures to protect the United States' interests are incorporated into permits for special park uses. To ensure this protection, superintendents will include in each permit issued some, or all, of the following items, depending on the activity. (The following items, however, may not be imposed on First Amendment activities.)

6.1 Performance Bonds. Performance bonds or deposits are the permittee's guarantee of compliance with permit conditions and reimbursement to the park for damage to resources and/or facilities as a result of the permittee's activities. An amount adequate to cover the cost of restoration, repair, rehabilitation and cleanup of the area may be required. Should resource damage beyond that envisioned by the original performance bond result from the permittee's use, the park may file suit against the permittee under the authority of *16 U.S.C. 19jj*, Park System Resource Protection.

6.2 Liability Insurance. Liability insurance protects the government from negligent actions by permittees. Insurance in an amount sufficient to protect the interests of the United States may be required as a condition of the permit.

6.3 Property Insurance. Adequate property insurance coverage should be required whenever Federal buildings and/or facilities are being made available pursuant to a permit.

6.4 Hold Harmless/Indemnification. This is a legal statement intended for use as a condition of a permit. It states that the Federal government, its agents and employees, cannot be held liable for claims for damages or suits for any injuries or deaths from any cause occasioned by the permittees' occupancy and use of the land included within the permit.

6.5 Tort Claim Provision. This statement is used in lieu of an indemnification requirement when issuing permits to other Federal agencies. While it is directed mostly at the occupancy of NPS property by the other agency, it might be used for other purposes.

6.6 Anti-Deficiency Act. This statement protects the NPS against claims arising from an executed Agreement, which would be in excess of the fiscal year appropriation for that agreement.

6.7 Bankruptcy Termination. While this statement is primarily aimed at agricultural Special Use Permits, it might be appropriate under other circumstances and other instruments, depending on the use. Its purpose is to prevent the park or park lands from being claimed as an asset or becoming involved in any part of a settlement if the permittee becomes involved in bankruptcy proceedings.

7. NATIVE AMERICAN RIGHTS

The NPS, to the extent consistent with each park's legislated purposes, will develop and execute its programs in a manner that reflects knowledge of and respect for the cultures - including religious and subsistence traditions - of Native American tribes or groups with demonstrated ancestral ties to particular resources in parks.

The NPS will be as unrestrictive as possible in permitting Native American access to and use of traditional sacred resources for customary ceremonials, provided that such use does not cause derogation of the resources.

The NPS will permit members of Native American tribes or groups to have access to park areas to perform traditional religious, ceremonial, or other customary activities at places that have been used historically for such purposes. The Service will not direct visitor attention to the performance of religious observances unless the Native American group so wishes.

Members of Native American tribes or groups may enter parks for traditional non-recreational activities without paying an entrance fee.

8. FIRST AMENDMENT ACTIVITIES

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

8.1 General. Freedom of speech, the press, religion, and assembly are rights, not privileges. However, the courts have recognized that activities associated with the exercise of these rights may be reasonably regulated to protect legitimate government interests. Therefore, in order to protect park resources, the NPS may regulate certain aspects of First Amendment activities, such as the time when, the place where, and the manner in which they are conducted. NOTE: It is the *conduct* associated with the exercise of these rights that is regulated, and never the *content* of the message. There are also First Amendment issues associated with photography and filming activities addressed later in this Director's Order. NPS regulations pertaining to First Amendment activities are found at 36 CFR 2.51 and 2.52, or at 36 CFR 7.96(g) for designated park units in the National Capital Region.

8.2 Religion. The First Amendment also prohibits the government from supporting or promoting a particular religion, religious view, or religious organization. However, it does not prohibit the National Park Service from permitting religious activities in park areas, in the same way as the Service would permit the exercise of any other First Amendment activity.

8.3 Equal Protection. The principle of equal protection, guaranteed by the due process clause of the Fifth Amendment, provides that, to the extent any particular activity is permitted, similar First Amendment activities may not be excluded. Therefore, any restraints imposed must be administered even-handedly to all groups and individuals for activities similarly situated. The NPS may not permit one group to engage in conduct while prohibiting others under similar circumstances. Superintendents must be particularly careful to be neutral in their judgment, and not to favor organizations with which they are personally familiar, or whose "message" they privately support.

8.4 Political Events. Political events may be either First Amendment activities or special events. Typical examples of First Amendment events include public demonstrations, assemblies, or other forms of public expression of opinions and views. Examples of non-First Amendment events include political fund-raisers and other by-invitation-only political events not normally open to the general public. In addition to all the normal considerations involved in allowing special events in the parks, superintendents must take into consideration whether or not the activity would be permitted if requested by any other group.

9. WATER RIGHTS

Special park uses may involve the use and/or conveyance of water. Water law, both Federal and state, governs the manner, timing, and amount of use that any party, including the National Park Service, may make of any water body, including both surface and ground water. If a water use is not authorized under either Federal, state, or common law, then such use will not be permitted in an NPS unit.

Policy and additional laws specific to the National Park Service govern the sale, or other form of disposal, of water from Federal lands administered by the NPS. The general thrust of these laws and policy is that the NPS has no excess or surplus water and that water cannot be sold, given away, or otherwise provided for non-NPS use except under very limited circumstances.

Specific guidance on the sale or lease of services, resources, or water available within an area of the National Park System is available from the Water Resources Division, Water Rights Branch.

(See also Director's Order #35: Sale or Lease of Services, Resources, or Water.)

10. RIGHTS-OF-WAY

10.1 Authorities. The NPS may issue right-of-way permits only for those uses or activities specifically authorized by Congress and only if there is no practicable alternative to such use of NPS lands. Authority for a utility Right-of-Way (ROW) through parks is found in *16 USC 5* for radio, television and other forms of communication transmitting and receiving structures, facilities and antennas (including telecommunication antenna sites); and *16 USC 79* for electric power, telephone and telegraph lines, and a wide variety of water conduits (including sewer); or in a very few cases, park-specific legislation.

Guidance for authorizing roads and highways in NPS areas is found in Director's Order #87. Authority for highways that are part of the Federal Aid Highway System is found at *23 USC 317*. Authority for permitting access to in-holdings in Alaska park units was granted by Public Law 96-487, title XI, §1110(b)(16 USC 3170(b)) .

Examples of uses for which there are no general authorities are roads that are not a part of the Federal Aid Highway System (National Highway System), and oil, gas, or other petroleum product pipelines. Oil and gas lines that serve NPS facilities only may be authorized under *16 USC 1 -3*, but these lines may not be extended to serve any other purpose. If authority for a requested use is not found in general or specific legal authority, the park must deny the use. Should an unauthorized right-of-way already exist, the park should contact the regional program manager for resolution.

10.2 Regulations. NPS general regulations regarding ROW permits are located at *36 CFR Part 14*. The regulations for NEPA Section 102 and NHPA compliance are located at *40 CFR Part 1500* and *36 CFR Part 60, 63 and 800*. Alaska-specific regulations on ROW's and NEPA compliance are located at *43 CFR*.

10.3 Telecommunication Antenna Sites. Director's Order 53A, 'Wireless Telecommunications,' is hereby rescinded and replaced by the applicable provisions of this Director's Order. The NPS will comply with the Telecommunications Act of 1996 and any other policies, requirements, or instructions that are applicable to the Service. In complying, superintendents will:

- Encourage preliminary meetings with telecommunication industry companies who wish to discuss pending or proposed applications for sites in the park to explain park concerns and understand industry timeframes.
- Encourage meetings with the applicants during the post application decision process as necessary, but especially if the manager is considering denying the application. Such meetings should take place prior to written notification of denial.
- Consider the safety of the visiting public when reviewing telecommunication site applications, including the potential benefit of having telephone access to emergency law enforcement and public safety services.
- Ensure that, when an application is submitted, the park replies in writing within 10 business days with an initial response on the application, and that response will be 'yes' (probably a known categorical exclusion requiring very minor additional information to be submitted), 'no' (with reasons in writing), or 'maybe' (with additional information to be submitted).
- Ensure that, to the extent possible, the timeline and detailed steps enumerated in Reference Manual 53 are followed and the permit is issued or denied.
- Ensure that compliance actions and reviews will be conducted expeditiously and consistent with all applicable statutes.

A telecommunication use is considered a utility and, like other utilities on NPS lands, will be authorized using the right-of-way permit process described in Reference Manual 53. *16 USC 5* will be used as the authority to permit telecommunication antenna sites.

10.4 Wilderness. Except as specifically provided by law, there will be no permanent road, structure or installation within any study, proposed, recommended, or designated wilderness area. This includes the installation of utilities. (See the Wilderness Act *16*

USC 23). The NPS will not issue any new right-of-way permits or widen or lengthen any existing rights-of-way in study, proposed, recommended, or designated wilderness areas. (See also [Director's Order #41: Wilderness Preservation and Management](#))

11. AGRICULTURAL USE

Special Use Permits (SF 10-114) will be issued only for agricultural activities which meet defined objectives of restoring or perpetuating human-influenced landscapes identified in NPS planning documents. If a desired agricultural use is not specifically authorized in a park's enabling legislation, a superintendent may issue an agricultural permit under *16 USC 1 - 3*.

In permitting agricultural use of NPS lands, the NPS will foster practices which conserve soil, protect natural waterways and groundwater, control proliferation of exotic species and avoid toxic contamination of the environment. Benefits and potential impacts of agricultural use should be carefully weighed. In no case will a permit be issued where the activity involved would impair or derogate any natural or cultural resource. Special consideration needs to be given to riparian areas, wetlands, and protection of threatened or endangered species and their habitats.

12. DOMESTIC LIVESTOCK MANAGEMENT

12.1 General. Each park that allows livestock use, including parks where livestock is managed by other agencies, will develop a livestock management plan. The NPS will allow livestock use only when the use is:

- Specifically authorized by a park's enabling legislation or other legislation; or
- A reserved right of use arising from the acquisition of a tract of land; or
- Required in order to maintain a historic scene; or
- Conducted as a necessary and integral part of a recreational activity appropriate to the park.

No livestock use or activity, regardless of how authorized, will be allowed that would impair or derogate the resources, values or purposes for which a park was established. In particular, livestock use that depletes or degrades non-renewable resources, or whose effects cannot be mitigated, will not be allowed.

The use of pack-in feed--preferably pellets--is encouraged for all pack and saddle stock while on the trail, and is required whenever grazing would have adverse impacts on a park's resources. When not actively engaged in recreational activities, pack and saddle stock will either be removed from the park or be confined within an appropriate corral or other structure, and fed pelletized feed or hay that is free of weed seeds.

12.2 Permitting Instruments. Grazing activities that are allowed will be conducted only pursuant to the terms and conditions of a special use permit, property lease, concessions contract or commercial use authorization.

In addition to any other penalty provisions, violation of the terms and conditions of the permit may result in revocation of the livestock use privilege.

(See Director's Order #38: Property Leasing; also Director's Order #77 and Reference Manual 77-3 for livestock management requirements. Also see sections 8.6.8--Domestic and Feral Livestock Management, and 4.4.10—Exotic Species, in NPS Management Policies.)

13. SPECIAL EVENTS

13.1 General. Special events are activities, such as sporting events, pageants, regattas, public spectator attractions, entertainment, ceremonies, large group camps, or rendezvous, which fall under the category of privileges. Special events differ from public assemblies and public meetings in that the latter activities are rights protected by the First Amendment.

A superintendent is required to apply the criteria spelled out at *36 CFR 2.50*, or, for the designated park units in the National Capital Region, the special regulations at *36 CFR 7.96(g)(4)(vi)*. These regulations authorize special events, provided:

- There is a meaningful association between the park area and the event;
- The observance contributes to visitor understanding of the significance of the park; and
- The superintendent has issued a permit.

Generally speaking, these criteria should be interpreted as being inclusive rather than exclusive, since most visits to national parks will entail some meaningful association and impart some understanding of the significance of the park. However, *36 CFR 2.50* requires that a permit be denied if, in the superintendent's opinion, the special event will:

- Cause injury or damage to park resources; or
- Be contrary to the purposes for which the park was established, or unreasonably impair¹ the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative locations within the park; or
- Unreasonably interfere with the interpretive, visitor service, or other program activities, or with the administrative activities of the NPS; or
- Substantially impair¹ the operation of public facilities or services of NPS concessioners or contractors; or
- Present a clear and present danger to public health and safety; or
- Result in significant conflict with other existing uses.

It is the Service's intent to apply these criteria in a manner that will make the permitting process more uniform Service-wide, reduce the possibility of superintendents denying permits without good cause, and result in the timely processing of permit requests.

(See also Management Policies 8.6.1; and see 36 CFR 7.96(g) for special considerations applicable to the National Capital Region.)

13.2 Political Events. Political events may be First Amendment activities or special events. First Amendment activities of this nature are public demonstrations, assemblies, or other forms of public expression of opinions and views (see section 8.4). Examples of special events in the same vein are political fundraisers and other invitation-only political events not normally open to the general public.

13.3 Sale of Food or Merchandise. In general, the sale of food or merchandise in the parks without a permit is prohibited by 36 CFR 5.3. Most sales operations within parks are managed under concession contracts or agreements with cooperating associations. Sales operations are restricted to indoor facilities specifically designated for use by concessioners and cooperating associations for that purpose.

The sale of printed material in connection with a special event or First Amendment activity is allowed, but only as provided in 36 CFR 2.52, or in 36 CFR 7.96(k).

The NPS places significant restrictions on the sale of items in connection with a special event. The sale of food is allowed only when the sale: (1) does not conflict with the activities of an NPS concession, (2) is managed under a permit, and (3) is conducted in compliance with [Director's Order #83: Public Health](#). The sale of T-shirts, clothing, arts and crafts, and any other merchandise in connection with a special event or a First Amendment activity is prohibited.

13.4 Fireworks Display. Fireworks displays are not permitted in natural parks. In other parks, such displays must be approved by the superintendent, following consultation with the Regional Safety Officer.

14.FILMING AND PHOTOGRAPHY

As with any other request for a special park use, filming and photography activities may be permitted only when they meet the criteria listed in section 3.1. If those criteria are met, then the following policies and procedures apply.

14.1 Permits Requirements. The Special Use Permit (Form 10-114) is the instrument used to authorize filming or photography in NPS areas.

A permit is required for any filming or photography that:

- involves the use of a model, set, or prop; or
- requires entry into a closed area; or
- requires access to the park before or after normal working hours.

A permit is not required for:

- A visitor using a camera and/or a recording device for his/her own personal use and within normal visitation areas and hours; or
- A commercial photographer not using a prop, model, or set, and staying within normal visitation areas and hours; or
- Press coverage of breaking news. This never requires a permit, but is subject to the imposition of restrictions and conditions necessary to protect park resources and public health and safety, and to prevent impairment or derogation of park resources or values.

14.2 Other Considerations

- A superintendent will not sign a location release supplied by an applicant.
- A superintendent may request a credit line, provided that the content or subject matter of the filming project would not reflect adversely on the National Park Service.
- The NPS may actively assist filming and photography activities that promote public understanding and appreciation of the National Park System, and the Director may authorize use of the arrowhead symbol for such filming projects.
- The NPS will not censor the content of any filming project, nor require finished film products for review, files, or documentation purposes. However, a superintendent may review a story board or other material offered by the applicant to help determine whether:
 - A credit line would be appropriate; or
 - It would be appropriate for the NPS to actively assist a filming activity or authorize use of the arrowhead symbol.

(See Reference Manual 53 for more details.)

15. EXPIRED RESERVATIONS OF USE AND OCCUPANCY

Generally, the NPS, when it purchases properties, will remove any encumbering structures and restore the sites for park purposes. Superintendents may not extend use and occupancy reservations. However, they may either: (1) issue a lease (see Director's Order #38: Property Leasing), or (2) issue a SUP for temporary residency in an NPS structure at market rental rate, provided a determination has been made that:

- It is in the best interest of the park and the United States; and
- The use will not result in impairment or derogation of resources, values, and purposes for which the park was established; and
- One or more of the following criteria are met:
 - Specific legislative authority exists to allow temporary residency;
 - The NPS is unable to remove the structure for a significant period of time;
 - The structure has or may have historic significance that would be endangered if it were vacated;
 - Extreme environmental conditions temporarily prevent the occupant from vacating the structure; or

- Termination of residency would create an undue hardship on the occupant and the structure has served as the occupant's primary residence.

The permittee will reimburse the park for all costs associated with issuing and managing the permit, and will be charged a fee for the use of the facility, resource, or property based upon comparable prices in the local market (fair market value). The SUP does not grant any interest in the land. (*See Reference Manual 53, Appendix 14.*)

16. SPECIAL CONSIDERATIONS FOR NPS UNITS IN ALASKA

16.1 General. NPS Special Park Use policies are generally applicable to national park units in Alaska. However, in addition to the statutory authorities, regulations, cost recovery and policy directives discussed in this Director's Order and Reference Manual 53, superintendents must be familiar with the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and its implementing regulations. They must also be aware that, in addition to compliance with applicable laws such as NEPA and NHPA, any action to permit the use of public land will require an evaluation of the effect on subsistence uses that are authorized by section 810 of ANILCA.

16.2 Transportation or Utility Systems. Title XI of ANILCA requires a specific process for application, review, and approval of any transportation or utility system (TUS) in Alaska national park units. Approval of a TUS requires an existing statutory authority (just as it does elsewhere in the National Park System). If there is no existing authority, new legislation will be necessary if the requested use is to be authorized.

16.3 Access to In-holdings. Section 1110(b) of ANILCA requires the Secretary to give in-holders such rights as may be necessary to assure adequate and feasible access for economic and other purposes, subject to reasonable regulation to protect the natural and other values of Alaska national park units. Section 1110(b) is an authority for granting access to in-holdings in Alaska units. Under Department of the Interior regulations (*43 CFR 36.10*), in-holders must apply for a right-of-way permit using Standard Form-299 or a mining plan of operation in order to receive access rights.

16.4 Special Access. Section 1110(a) of ANILCA authorizes the use of snow machines (during periods of adequate snow cover or frozen river conditions), motorboats, airplanes, and non-motorized surface transportation methods for traditional activities (where such activities are permitted by law), and for travel to and from villages and home sites.

16.5 Temporary Access. Section 1111 of ANILCA authorizes temporary access across Alaska national park units if necessary for survey, geophysical, exploratory, or other temporary use of non-Federal land, and if such access would not result in permanent harm to unit resources.

16.6 Special Considerations. NPS managers in Alaska must be familiar with *43 CFR Part 36*, *36 CFR Part 13*, and all applicable titles of ANILCA. Alaska-specific law and

regulations must be carefully considered before applying the Special Park Uses Handbook in Alaska.

17. SCIENTIFIC RESEARCH AND RELATED COLLECTING

17.1 Natural and Social Science Research and Related Collecting. Natural and social science research and related collecting activities in parks do not fall within the definition of "special park uses" and therefore are not governed by special use permits. Instead, these activities are governed by Scientific Research and Collecting Permits. For information about permitting natural and social science research and related collecting activities in parks, please refer to Director's Order 24: NPS Museum Collections Management; and Natural Resources Reference Manual 77; Director's Order 74: Scientific Research and Collecting; and Director's Order 78: Social Science (note: some of these documents may not be completed as of this date). Additional guidance may be obtained from regional science advisors or from the Associate Director, Natural Resource Stewardship and Science.

17.2 Archeological Research in NPS Areas. Research must be conducted in accordance with the terms and conditions of a Federal Archeological Permit, Form DI-1991. Any archeological research conducted on park lands must be consistent with applicable statutes, regulations, policies, standards, and guidelines.

Permits issued to non-NPS researchers for archeological research on park lands must comply with regulations contained in 43 CFR Parts 3 and 7.

-----End of Director's Order-----